

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BRUCE AUDINO,
Plaintiff

A decorative vertical flourish consisting of a series of stylized, swirling lines forming a column-like pattern.

V.

CASE NO. 4:15-cv-197

HARTFORD CASUALTY INSURANCE
COMPANY¹,
Defendant.

JURY TRIAL

NOTICE OF REMOVAL

Defendant Hartford Casualty Insurance Company (“Hartford”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, files this Notice of Removal of the captioned action *Bruce Audino v. Hartford Casualty Insurance Company*, Cause No. 417-00496-2015, on the docket of the 417th Judicial District Court of Collin County, Texas. In support of this Notice of Removal, Hartford respectfully represents the following:

1. Bruce Audino (“Plaintiff”) commenced the captioned action against Hartford on or about February 3, 2015, by filing Plaintiff’s Original Petition (the “Petition”) in the 417th Judicial District Court of Collin County, Texas.

2. A copy of all process, pleadings, and orders in the state court action are filed herewith. [See Index of Matters Being Filed: (a) Citation to Hartford and Service of Process Transmittal from CT Corporation reflecting service on February 19, 2015 (b) Plaintiff's Original Petition (c) Hartford's state court general denial. Undersigned counsel has requested a certified copy of the state court file and will supplement with it when it is received.]

¹ Hartford Casualty Insurance Company is an improper defendant. The Plaintiff's Petition refers to Property & Casualty Insurance Company of Hartford throughout the body of the Petition. Property & Casualty Insurance Company is the company that issued the insurance policy to the Plaintiff and should be the defendant in this lawsuit.

3. The Petition avers that Plaintiff is an individual residing in Collin County, Texas. (Petition, ¶ 2).

4. The Petition alleges that “Defendant Property and Casualty Insurance Company of Hartford is an insurance company doing business in Texas that may be served through its Registered Agent, CT Corporation System at 1999 Bryan St., Ste. 900, Dallas, Texas 75201-3136.” (Petition, ¶ 3). Property & Casualty Insurance Company is not named in the caption of the lawsuit. However, if its citizenship is considered in this removal since it is the real party in interest and should be the defendant, Property & Casualty Insurance Company of Hartford is a corporation organized under the laws of the state of Indiana and with its principal place of business in Connecticut. Hartford Casualty Insurance Company, the entity that is improperly named in the caption of the lawsuit, is a corporation organized under the laws of the state of Indiana with its principal place of business in Connecticut.

5. The Petition alleges that Plaintiff owns residential property located at 711 Forest Oaks Dr., Fairview, Collin County, Texas (Petition, ¶ 7), which was insured under an insurance policy issued by Hartford. The Petition alleges that on or about April 4, 2014, “a severe wind and hail storm caused covered damage to the Subject Property. The storm caused extensive damage to Plaintiff’s roof, door, window screen, awning, air conditioning units, gazebo and pool filter requiring repair or replacement.” (Petition, ¶ 8) The Plaintiff alleges that he submitted a claim for the damage shortly after the storm (Petition, ¶ 9) and that Hartford failed to adequately indemnify the Plaintiff for the entire scope of the damage, among other allegations. (Petition, ¶¶ 11-25).

6. Plaintiff seeks monetary relief between \$100,000 and \$200,000. (Petition, ¶ 6) This amount satisfies the jurisdictional requirement of this Court.

7. Hartford was served with the Petition by certified mail, delivered to CT Corporation System on February 19, 2015.

8. This Notice of Removal is filed within 30 days of service of the Petition and is therefore timely under 28 U.S.C. Section 1446(b).

9. Hartford denies the underlying facts as alleged by Plaintiff or as summarized above. Further, Hartford expressly denies that it has any liability to Plaintiff.

DIVERSITY JURISDICTION

10. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and this matter is therefore removable to this Court pursuant to 28 U.S.C. § 1441(a), because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Plaintiff resides in Collin County, Texas.

11. “Hartford Casualty Insurance Company” is apparently a mistake in the caption of the case, because it was not the company that is referenced in the body of the Plaintiff’s Petition, and it was not involved in the policy and the claim made under it that is the subject of this lawsuit. Nevertheless, for purposes of establishing diversity, Hartford Casualty Insurance Company is incorporated in Indiana and has its principal place of business in Connecticut. Property & Casualty Insurance Company of Hartford (who is mentioned in the body of the Plaintiff’s petition) is incorporated in Indiana and has its principal place of business in Connecticut.

12. The amount in controversy exceeds the jurisdictional minimum. Plaintiff seeks over \$100,000.00 in damages. (Petition, ¶ 5) Plaintiff also seeks treble damages, an award of additional and consequential damages, including but not limited to court costs, attorney’s fees, prejudgment and post-judgment interest, and exemplary damages. (Petition, ¶¶ 30, 38-39, 42-45,

Conclusion & Prayer). Attorneys' fees and penalties are included as part of the amount in controversy. *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

13. Plaintiffs in Texas also are not limited to recovery of damages requested in their pleadings, “[l]itigants who want to prevent removal must file a binding stipulation or affidavit with their complaints.” *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir.1995) (quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir.1992)). “The general principle is that Plaintiff will have to show that they are bound irrevocably by their state pleadings.” *Id.* at 1412 n.10.

14. Plaintiff did not file any binding stipulation or affidavit with the Petition.

REMOVAL PROCEDURE

15. Hartford has provided the clerk of the 417th Judicial District Court of Hidalgo County, Texas with notice of this removal.

16. Pursuant to Local Rule 81, copies of the following documents are hereby provided to the clerk for filing in connection with this Notice of Removal:

- a. A list of all parties in the case, their party type and the current status of the removed case
- b. A civil cover sheet and a copy of all pleadings that assert causes of action all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court as required by 28 U.S.C. § 1446(a) (a certified copy of the state court file will be filed upon receipt by undersigned counsel).
- c. A complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone, and parties represented by him or her.
- d. A record of which parties have requested trial by jury
- e. The name and address of the court from which the case is being removed.

WHEREFORE, Hartford hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/Martin R. Sadler

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CERTIFICATE OF SERVICE

I hereby certify that on this the **20th day of March, 2015**, a copy of the foregoing has been served on all counsel of record in this action by electronic service or by facsimile (888-467-5581) or by U.S. Mail to:

Bryant Fitts
Carla Delpit
FITTS LAW FIRM, PLLC
2700 Post Oak Blvd., Suite 1120
Houston, Texas 77056

/s/Martin R. Sadler
Martin R. Sadler